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Thomas A. Cloud, Esquire

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May 4, 2005

VIA FEDEX DELIVERY

Blanca S. Bayo, Director
Division of Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

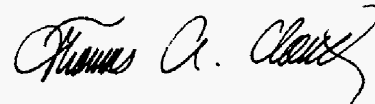
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COMMISSION
CLERK

Re: Docket Nos. 010492-WS and 030682-WS
April 2005 Status Report Regarding Zellwood Station Cooperative
Transfer to Orange County

Dear Ms. Bayo:

Please find enclosed the original and seven (7) copies of a letter Status Report in the above-referenced docket to Jennifer Brubaker per the FPSC's request for filing.

Sincerely yours,



Thomas A. Cloud, Esquire

GrayRobinson, P.A.

Attorneys for Zellwood Station
Cooperative, Inc.

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May 4, 2005

VIA E-MAIL & U.S. MAIL

Jennifer Brubaker
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket Nos. 010492-WS and 030682-WS
April Status Report Regarding Zellwood Station Cooperative Transfer to Orange
County

Dear Ms. Brubaker:

Pursuant to our prior commitment with the Florida Public Service Commission, I am providing to you and all other parties to this proceeding our status report of activities concerning the transfer of the water and sewer plants from Zellwood Station Cooperative to Orange County for the month of April, 2005.

During the month of April, Orange County and the City of Apopka met and have reached agreement on the terms of the new draft of the Orange County/Zellwood Asset Purchase Agreement and associated agreements. A copy of the new Asset Purchase Agreement and associated agreements are enclosed for circulation to the Commission staff. As reported in the past, the Asset Purchase Agreement implements the plan to have Apopka utilize capacity in its treatment and supply facilities to provide the wholesale water and wastewater services to Zellwood after the closing between Zellwood and Orange County.

We believe the issue of the capacity releases has finally been resolved. We hope that the closing can now be scheduled for late summer.

If you, or anyone else has any questions, comments or concerns whatsoever regarding this or any other issue related to this transaction, please don't hesitate to contact us. Copies of any documents referred to in this letter are available upon request.

Very truly yours,



Thomas A. Cloud, Esquire

GrayRobinson, P.A.
Attorneys for Zellwood Station Cooperative,
Inc.

TAC:ds

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DOCUMENT NUMBER DATE

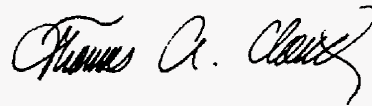
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FPSC-COMMISSION CLERK

Jennifer Brubaker
May 4, 2005
Page 2

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and exact copy of the above and foregoing has been furnished via **Federal Express** to Blanca S. Bayo, Director, Division of Clerk and Administrative Services, Florida Public Service Commission; **via electronic mail and U.S. Mail** to Jennifer Brubaker, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; and by **facsimile and U.S. Mail** to Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, this 4th day of May, 2005.



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W. Christopher Browder, Esquire
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Attorneys for Zellwood Station Co-Op, Inc.

**CITY OF APOPKA / ORANGE COUNTY
WATER & WASTEWATER SYSTEMS
ASSET PURCHASE & SALE AGREEMENT**

THIS AGREEMENT, made and entered into by and between **ORANGE COUNTY**, a political subdivision of the State of Florida and a charter county, (hereafter "County"), and **THE CITY OF APOPKA**, a Florida municipal corporation, (hereafter "City").

RECITALS

1. City and County entered into that certain "Amended and Restated Water, Wastewater, and Reclaimed Water Territorial Agreement"(Territorial Agreement) on or about October 26, 2004.
2. City and County agreed in said Territorial Agreement that City would purchase from County certain Specified County Facilities as defined herein and identified in Exhibit "1", attached hereto and by this reference made a part hereof.
3. County has conducted a public hearing pursuant to state law to approve the sale by the County of the Specified County Facilities to the City, and authorized the sale of these facilities by the County.
4. County owns and operates potable water production, treatment, storage, transmission, and distribution system in Orange County, Florida. The water system shall hereinafter be sometimes referred to collectively as the "Water System", and noted as such on Exhibit 1.
5. County owns and operates a sanitary wastewater collection, treatment and effluent disposal system in Orange County, Florida, commonly known as the Wastewater System (this wastewater system being hereinafter sometimes referred to as the "Wastewater System" and denoted as such on Exhibit 1).
6. County has in place that certain Orange County/Zellwood Station Co-Op, Inc. Water, Wastewater and Reclaimed Water Agreement (Zellwood Service Area Agreement), together with wholesale agreements to provide water, wastewater and reclaimed water to the Zellwood Station Cooperative, Inc., and such Zellwood Service Area Agreement and wholesale agreements are included in the Specified County Facilities to be acquired and served by City pursuant to this Agreement (such agreements collectively hereinafter called the "Zellwood Station Agreements").

7. The Wastewater System, the Water System and the Zellwood Station Wholesale Agreements shall frequently be referred to in this Agreement as the "Utility Systems" or the "Specified County Facilities."

8. The County is willing to sell the Utility Systems to the City, and the City is willing to purchase the Utility Systems from the County, a substantial part of the value of which is the Utility Systems are the operating plants, accompanying real estate and the operations and the customer base, service areas, permit rights and other intangibles.

9. The City has the power and authority to acquire the Utility Systems and to operate the Utility Systems in order to provide potable water, reclaimed water, and wastewater infrastructure and service within Orange County, and the County has the power and authority to sell the Utility Systems.

10. Pursuant to Section 125.3401, *Florida Statutes*, the County has examined the Utility Systems Assets, has examined the existing financial structure of the Utility Systems, has examined the long-range needs and goals of the County relative to the provision of water and wastewater service to its present and future citizens, and has determined that the sale of the Utility Systems to the City is in the public interest.

11. The parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement.

ACCORDINGLY, in consideration of the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and form a material part of this Agreement.

SECTION 2. PURCHASE AND SALE OF WATER AND WASTEWATER SYSTEMS ASSETS. The County agrees to sell and the City agrees to buy, pursuant to the circumstances noted in the Recitals above, the Utility Systems, consisting of all real, personal and mixed property used or held for use in connection with the Utility Systems, as described on Exhibit 1 of this Agreement, hereinafter referred to as the "Purchased Assets" or the "Water and Wastewater Systems Assets". The Purchased Assets shall include City acquiring the County's rights, obligations and duties under the Zellwood Service Area Agreement. The Purchased Assets shall not include any cash derived from the fees, charges and monthly rates of the County received by the County up to the date of sale of the Utility System, except as set forth in this Agreement, nor shall it include the Excluded Assets described in Subsection 3.8 below. By separate agreement, City may, upon timely acquisition of the New Jerusalem/Willow Street Water Distribution System, be entitled to prepaid connection charges, if any such charges are prepaid by the Community Development Block Grant Program or SHIP Program relating to the

MAY-04-2005 WED 11:44 AM ORANGE COUNTY ATTORNEY'S OFFICE FAX NO. 407 836 5888

New Jerusalem/Willow Street Water Distribution System (which system is one of the Purchased Assets under this Agreement).

SECTION 3. PURCHASED ASSETS. On the Closing Date or Dates, as defined below, County shall sell, assign, transfer, convey and deliver to City, and City shall purchase, accept and pay for all of the right, title and interest in and to the following property and assets:

3.1 Utility System or Specified County Facilities Conveyed. The Facilities purchased by the City and sold by the County are set forth on Exhibit "_____".

3.2 Real Property. All real property and interests in real property (the "Property"), owned by the County, as described in Exhibit "2" hereof, whereupon water production wells, storage, treatment, pumping, transmission, and distribution facilities, wastewater treatment, collection, transmission, pumping and effluent disposal facilities and reclaimed water storage, pumping, transmission, and distribution facilities are located.

3.3 Easements and Other Rights.

The County transfers to City use of all rights, privileges, easements, licenses and prescriptive rights, and other areas owned and/or used by the County in connection with the construction, reconstruction, installation, maintenance and operation of the Utility Systems and the Purchased Assets (collectively referred to as the "Easements"), but any right for City to use public rights of way or County easements shall not convey any such rights of way or public interests of County in said rights of way or easements. The Easements are more particularly described in Exhibit "3" hereof, provided that any such easements located or shown in recorded plats and rights to locate lines in dedicated public rights-of-way are not included or required to be included in Exhibit 3, but any interest for potable water, reclaimed water or wastewater utility purpose of County in said easements and public rights of way are nevertheless being conveyed to the City.

3.4 Plant and Other Facilities. The following assets owned by the County and used or held for use in connection with the Utility Systems, as more specifically described in Exhibit "4" hereof, including all water production wells, treatment plant, storage, treatment, transmission, distribution, pumping, and other water facilities and all wastewater treatment plant, wastewater collection, transmission, pumping, and effluent disposal facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, collection and transmission pipes or facilities, valves, meters, service connections, and all other water and/or wastewater service connections, and all other water and wastewater physical facilities and property installations in use in connection with the operation of the Utility Systems and owned by the County.

3.5 Equipment. Where operating water systems or wastewater systems are being purchased by City pursuant to this Agreement, inventory of all equipment, tools, parts, laboratory equipment, office equipment and other personal property owned by the County and

located at the Mt. Plymouth Lakes Water Facility, Plymouth Regional Water Facility, and Plymouth Hills Water Reclamation Facility and attendant infrastructure utilized by the County exclusively in connection with and necessary to operate the facilities and the operation of these three properties, including only those items more particularly described in Exhibit "5" hereof.

3.6 Customer Records and Supplier Lists; Plans and Specifications.

County shall provide to City, at least thirty (30) days prior to closing, all current customer records showing that information described at Section 14.1(8) of this Agreement and available information relating to supplier lists, surveys, as-built water and wastewater plans, engineering and other drawings, designs, blueprints, plans and specifications, any and all reproducible documents, mylars, sepias, and other original documents used or held for use with the Utility Systems, accounting and customer records and all other information and business records in the possession of the County that relate to the operation of the Utility Systems. County shall not be obligated to provide any documents which County does not currently maintain in the regular course of business or which do not relate to the operation of the Utility Systems. The documents to be provided shall include any such documents related to work-in-progress, if any. A listing of the as-built engineering plans is attached to and incorporated in this Agreement as Exhibit "6".

3.7 Certificates, Permits, and Approvals.

a. County conveys and City purchases the Utility System, subject to all necessary regulatory approvals and to all conditions, limitations or restrictions contained therein, all existing original certificates, permits, and other governmental authorizations and approvals of any kind in the possession of County necessary to operate and maintain the Utility Systems in accordance with all governmental requirements, more specifically described in Exhibit "7", attached to and incorporated in this Agreement. Such certificates, permits and approvals represent approved capacities for the water system and wastewater system.

b. At or before the Closing, the City agrees to prepare and execute necessary forms required by governmental agencies to transfer and to assume County's future obligations under said permits and approvals. These certificates, permits, and approvals shall include any such certificates, permits, and approvals related to work-in-progress, if any.

3.8 Customer Deposits. Cash sums which represent the Utility System customers' water and wastewater service security deposits held by the County shall be and remain an asset of the County following the closing of this transaction. The City agrees to continue to provide utility services to the Utility System customers and will thereafter establish, as needed, deposit accounts for customers based on City procedures. County shall submit a final bill to Utility System customers pursuant to Section 10.2 of this Agreement and shall credit customers or refund excess deposits to customers as appropriate and required by law. City shall have no role or responsibility in the process of deposit applications to final bills or refunds. City and County agree to cooperate regarding notice to customers of the City's acquisition of the Utility System. Such notice shall include a statement that informs customers of the Utility System that the sale does not relieve customers of any payment obligation said customers may

have to County which was incurred prior to the sale.

3.9 Zellwood Station Co-Op Service Area and Wholesale Agreements.

The County has negotiated that certain agreement entitled Zellwood Service Area Agreement, with accompanying Wholesale Water and Wastewater Agreement, and the Wholesale Reclaimed Water Agreement. The Service Area Agreement and the Wholesale Agreements are attached as composite Exhibit "____". The County shall assign and the City shall accept assignment of each and all of the agreements set forth in said Exhibit. City agrees to provide the wholesale utility services set forth in said agreements, and City agrees to pay Zellwood the sum set forth in Exhibit "____" as compensation for said service area and the rights to the two wholesale agreements within one hundred twenty (120) days of the date of this Agreement and shall interconnect the Co-Op water and wastewater customer service lines with City's water and wastewater treatment facilities within ninety (90) days thereafter. City, by accepting assignment of the two wholesale agreements, accepts all County rights, duties, obligations, and City shall be entitled to all compensation from Zellwood Station Co-Op, Inc. pursuant to said wholesale agreements. County shall release to City any and all right of County to receive compensation under said wholesale agreements or otherwise for the delivery of wholesale water, wastewater or reclaimed water to the Zellwood Station Co-Op service area and to the Co-Op as a wholesale customer.

3.10 Grant Obligations.

a. The New Jerusalem/Willow Street Water Distribution Systems was constructed utilizing U.S. Department of Housing and Urban Development (HUD) grant funds. County requires and City agrees to forego the sale of the New Jerusalem/Willow Street Water Distribution Systems for a period of no less than ten (10) years from the closing date of this transaction.

b. The County was awarded a grant relating to the Lake Apopka Restoration Project, and obligations under that grant from the State of Florida Office of Tourism, Trade and Economic Development imposes ongoing obligations relating to certain of the County Specified Facilities being acquired by the City pursuant to this Agreement. City has been provided a copy of said grant documents and acknowledges receipt of the same. City agrees and covenants with County that, from the date City acquires the Specified County Facilities under this Agreement and thereafter, City shall comply with all grant conditions including, but not limited to, document maintenance, reporting requirements for work performed by the City and its individual departments, contractors and subcontractors and all required audit reports. This obligation upon City shall be ongoing and shall survive the closing of this transaction. City shall make any and all records of City relating to grant compliance available to County and state officials, and shall maintain said records for the time period required by the grant. This provision shall survive the closing of this transaction.

1. As required by conditions set forth in the Lake Apopka Restoration Project grant, after the closing of this transaction, the County shall retain

responsibility for all work performed and all expenses incurred in connection with the grant. However, if those conditions or obligations imposed by the grant relating to events or requirements occurring after the closing of this transaction, City agrees to indemnify and hold County harmless against any claims for failure to comply with any conditions set forth in said grant. City further agrees to indemnify and hold County and the State of Florida Office of Tourism, Trade and Economic Development, or other applicable State agency, harmless from any and all claims and demands for damages resulting in personal injury or death, or destruction or damage of property arising out of activities performed, under or in association with the grant agreement, including all applicable attorneys' fees and associated court costs.

3.11 Excluded Assets. The following assets of County regarding the Utility Systems shall not be included in the assets conveyed to City as part of the Purchased Assets:

- a. County's cash and County's bank accounts;
- b. County's accounts receivable due to County on the date of the closing of this transaction;
- c. Federal, State or Local Tax or other deposits (including customer deposits) maintained by County with any governmental authority or private vendor for County's use and benefit;
- d. Equipment and items listed in Exhibit "___"

SECTION 4. PURCHASE PRICE AND PAYMENT. The City agrees to pay to County on the Closing Date, and the County agrees to accept as the Purchase Price for the Utility Systems a total Purchase Price in the aggregate amount of \$ _____ Dollars subject to adjustments and less required prorations provided herein and any agreed to escrowed amounts. City and County agree that said Purchase Price shall be paid at Closing in federal or other immediately available funds by City warrant.

SECTION 5. TITLE EVIDENCE. City shall cause to be issued, at the expense of the City, a title commitment for an owner's ALTA Form B Marketability Policy in favor of the City in the amount of the value of all real property sold by County to City under this Agreement from a title insurance company licensed in Florida and reasonably acceptable to the City. The County shall convey real property and improvements by County deed pursuant to Section 125.35, *Florida Statutes*.

5.1 Exceptions to Title. The Commitment shall show the County to be (i) vested with fee simple title to the Property, and (ii) vested with valid easement interests for the easements described on Exhibit "3", subject to the following (the "Permitted Exceptions"):

- a. Ad valorem real estate taxes and assessments, if any, for the year 2004 and subsequent years;
- b. Restrictions set out in the recorded plats of subdivisions (although this requirement may not be construed as reimposing any such restrictions) covered by the Utility Systems;
- c. Easements for utilities and drainage set out in such recorded plats of subdivisions; provided, however, that none of the restrictions or easements set out in such recorded plats of subdivisions shall prevent, hinder or restrict the present use of the Property;
- d. Restrictions of record (except liens, encumbrances, or mortgages) that do not impair, restrict, or inhibit the present use of or improvement to the property as permitted by applicable zoning and land use regulations presently in effect and that are not coupled with a forfeiture or reversionary provision; and
- e. All local, state and federal laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances, regulations, restrictions, prohibitions and other requirements, none of which will prevent or hinder the present use of the Property and Easements.

5.2 Status of Title. The City shall have fourteen (14) days from receipt of the Title Commitment within which to examine same. If the City finds title, as shown on the Commitment, to be defective (i.e., matters which render title unmarketable in accordance with the title standards adopted by the Florida Bar and are not Permitted Exceptions), the City shall, within five (5) days thereafter, notify the County in writing specifying the defect(s), provided that if the City fails to give the County written notice of defect(s) on or before said nineteen (19) day period, the defects shown in the Commitment shall, anything in this Agreement notwithstanding, be deemed to be waived as title objections to closing this transaction, and the County shall be under no obligation whatsoever to take any corrective action with respect to same nor to warrant title to same in its statutory warranty deed of conveyance. If the City has given the County timely written notice of defect(s) and the defect(s) render the title other than as required by this Agreement, the County shall use its reasonable efforts to cause such defects to be cured by the Closing Date, which may be extended by County for a period of up to one hundred eighty (180) days to cure any such defects. In the event that defects are timely raised and the County, after exercising all reasonable efforts, cannot clear same prior to the Closing Date, then, in that event, the City shall have the right to purchase the Property and Easements in its then existing condition of title, or parties agree to negotiate to resolve the title defect in a mutually acceptable manner. Notice of such election shall be given by the City to the County, in writing, as contemplated in this Agreement, within the time herein prescribed.

5.3 Deletion of Standard Exceptions. County will execute at or prior to Closing, in favor of the title insurance company, the standard form mechanic's lien affidavit and

"Gap" affidavit to allow the Title company to delete all standard exceptions addressed by such affidavits. Prior to Closing, the surveys shall be updated by the City if City elects to survey the real property as reasonably requested by the Title company so that the survey exception may be deleted.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF COUNTY. The County represents and warrants to City that:

6.1 Organization, Standing And Power. The County is a charter county and political subdivision of the State of Florida. The County has all requisite power and authority to own, lease and sell its properties being conveyed hereunder and the Utility Systems, and to conduct its businesses related thereto as it is currently being conducted.

6.2 Authority for Agreement. The County has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. This Agreement has been duly authorized by all action required to be taken by the County, has been duly executed and delivered by the County, and constitutes a valid and binding obligation of the County, enforceable in accordance with its terms.

6.3 No Liens or Encumbrances. Except as otherwise specifically set forth in this Agreement or as may be released prior to the Closing Date, there are no mortgages, liens, claims or encumbrances of any type or nature upon or against the Purchased Assets including, but not limited to, mortgages, financing statements, or security instruments filed under the Uniform Commercial Code either in the County where the Property is located or with the Secretary of State. County is in exclusive ownership, possession, and control of the Purchased Assets except for non-exclusive easements, and County at Closing shall deliver possession and control of the Purchased Assets to the City.

6.4 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against the County before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Utility Systems or any of the Purchased Assets or the County's right and ability to make and perform this Agreement; nor is the County aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. The County is not in default with respect to any permit, approval order or decree of any court or of any administrative or governmental agency or instrumentality affecting the Utility Systems or any of the Purchased Assets. The County agrees and warrants that it shall have a continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial or administrative suits, actions, proceedings, and orders which in any way relate to the operation of the Utility Systems.

6.5 Leases. None of the Purchased Assets are subject to any interest of any lessor or lessee.

6.6 No Governmental Violations. The County is not aware and has not been

notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the Utility Systems. County shall be responsible for any such violations occurring prior to the closing, even if County or City only receive notice after the closing.

6.7 No Record Violations. The County is not aware and has not been notified of any restrictions or conditions of record which would adversely affect the use of the Utility Systems on the Property or Easements as described in Exhibits 1 and 2.

6.8 Disclosure. No representation or warranty made by the County in this Agreement contains any untrue statement of material facts or omits to state any material fact required to make the statements herein contained not misleading. Should the County become aware that any of the representations or warranties of City provided for herein are, or may reasonably be, materially untrue or incorrect, County will promptly advise the City of same, in writing, specifying in reasonable detail the reasons why the County believes such representations or warranties of City are, or may reasonably be, untrue or incorrect.

6.9 Survival of Covenants. County agrees that its representation and warranties set forth herein are true and correct as of the date of the execution hereof and shall be true and correct at the time of the Closing Date, and shall survive the Closing Date.

6.10 FIRPTA. The County is not a "foreign person" within the meaning of the United States tax laws and to which reference is made in Section 1445 (b) (2) of the *Internal Revenue Code*. On the Closing Date, the County shall deliver to the City a certificate to such effect.

6.11 All Necessary Governmental Permits and Approvals; Certifications. At or before the Closing Date, the County warrants that it shall cooperate with the City to transfer or obtain all necessary governmental permits and approvals such that the City can operate the Utility Systems until the expiration of County's permits, at the volume capacities set forth on Exhibit "8" hereof without exception. This warranty shall be limited by the assumption that the City operates the facilities in accordance with the permits; does not modify the facilities in any manner which would adversely affect the permits or undertake improvements not required by permit; and is further subject to force majeure and any change in applicable laws, rules and regulations including, but not limited to, existing laws, rules or regulations which require future compliance by owner of County's assets (such as the disinfectants/disinfection by-products rule).

6.12 No Violation by Virtue of Election. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government, or any indenture, agreement, or other instrument to which the County is a party, or by which it is bound.

6.13 No CERCLA Violations. The real property portion of the Purchased Assets have complied with, and the County has not violated, in connection with the ownership,

use, maintenance, or operation of the Property or the Purchased Assets, applicable environmental, federal, state, county, or local laws relating to pollution or protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, or the Toxic Substance Control Act ("Environmental Laws"). County has not authorized the placing or depositing of hazardous substances on the real property portion of the Purchased Assets except, if at all, in accordance with the applicable Environmental Laws, and County has no actual knowledge of any hazardous substance having been, or currently being, placed or deposited on the premises except in accordance with such Laws.

6.14 Location of Plants. The water and wastewater plants, wells, and lift stations used in the operation of the Utility Systems are located on the Property as identified in Exhibit 2 or in Easements described in Exhibit 3, and the use of such water and wastewater plants, wells and lift stations on the Property does not violate any zoning certifications, special exceptions or variances in a manner which would prohibit or materially interfere with the operation and maintenance of such water and wastewater plants.

6.15 No Construction. There is no construction work in progress on the Property other than that shown in Exhibit "10", all of which shall be performed by the County, and County shall provide at closing releases from any private contractor with lien rights under state law as to County or City or the assets of the Utility Systems.

6.16 Assurances Required. County has provided all documents and information requested in furtherance of this Agreement to City in relation to the Utility Systems and Purchased Assets which are available or can be reasonably available to County.

SECTION 7. CONDUCT PENDING CLOSING. The County covenants that pending the closing:

7.1 Business Conduct. Except as otherwise consented to in writing by City, whose consent shall not be unreasonably withheld, delayed or conditioned, for the period beginning on the date of execution of this Agreement and ending on the Closing Date, County shall:

- a. operate the Utility Systems in, and only in, the usual, regular and ordinary course and nevertheless comply with all applicable governmental requirements and law;
- b. maintain all of the Utility Systems' material structures, equipment, permits and other tangible personal property in good repair, order and condition, except for depletion, depreciation, ordinary wear and tear and damage by unavoidable casualty;
- c. keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it for the Utility Systems;

d. perform, in all material respects, all of its obligations under agreement, contracts and instruments relating to or affecting the Utility Systems' properties, assets and operation;

e. subject to available administrative remedies pursuant to Chapter 120, *Florida Statutes*, or any administrative judicial procedures or proceedings applicable to particular permits, comply in all material respect with all statutes, laws, ordinances, rules and regulations applicable to it and to the operation of the Utility Systems;

f. promptly advise the City, in writing, of any material change which adversely affects the operation of the Utility Systems;

g. not enter into any transaction, including without limitation, the purchase, sale or exchange of property, the value of which exceeds \$10,000.00, which relates to the Utility Systems, except in furtherance of this Agreement with the City, or the rendering of any service to City except in the ordinary course of and pursuant to the reasonable requirements of the business of County; and

h. subject to available administrative remedies pursuant to Chapter 120, *Florida Statutes*, or any administrative or judicial procedures or proceedings applicable to particular permits, comply with all Utility Systems permit requirements and obtain all necessary permit extensions or renewals with no additional operational or capital obligations such that said permits are valid as of the Closing Date.

i. Absence of Changes. After the date of the execution of this Agreement, the County shall not:

1. undergo any change in its condition of properties, assets, liabilities, business or operations other than changes in the ordinary course of business which are not, either in any case or in the aggregate, materially adverse to the operation of the Utility Systems;
2. acquire or dispose of any of the Utility Systems' assets or properties of material value (in excess of \$1,000.00) except in the furtherance of this Agreement, except in the ordinary course of business and except with the City's consent, which shall not be unreasonably withheld, delayed or conditioned;
3. subject to available administrative remedies pursuant to Chapter 120, *Florida Statutes*, or any administrative or judicial procedures or proceedings applicable to particular

permits, intentionally fail to comply with all Utility Systems permit requirements; and

4. fail to seek or obtain any necessary permit extensions or renewals so that said permits are valid, extended or seeking extension as of the Closing Date.

7.2 Risk of Loss. The County shall bear the risk of loss, damage or destruction of the Purchased Assets by fire or other casualty prior to and including the Closing Date. If any portion of the Purchased Assets is damaged by fire, act of God or other casualty before the Closing Date, and such damage has not been repaired, or provision made for such repair, by the Seller as of the Closing Date, the City shall have the option of (1) taking the Purchase Assets as is, without reduction in price, together with the County's assignment to the City of all rights under its insurance policies and all of the insurance proceeds, if any; or (2) taking the Purchased Assets, as is, with a reduction in price, mutually agreed to by County and City, based upon a percentage allocation of the Purchase Price derived by comparing the net book value of the Purchased Assets destroyed to the net book value of the Utility Systems and the County shall maintain all rights under its insurance policies and to all of the insurance proceeds; or (3) electing not to purchase the particular asset subject to the capital loss.

7.3 No Transfers or Encumbrances. From and after the date of the execution of this Agreement, County will not dispose of, hypothecate or encumber any of the Purchased Assets, without the prior written consent of the City, which shall not unreasonably be withheld, with the exception of any transactions occurring in the ordinary course of County's business.

7.4 Access to Records. The County will at all times cooperate by providing reasonable access, upon prior written notice (not less than five (5) working days in advance), to County records and facilities applicable to the Utility Systems for inspection to assist in acquainting the City's operating and administrative personnel in the operation of the Utility Systems; provided, however, that no such inspection shall materially interfere with the operation of the Utility Systems or the day to day activities of the County's personnel.

7.5 Performance of Closing Conditions. The County shall perform all of the conditions to closing which should be performed by the County prior to the Closing Date as provided herein.

7.6 Examination and Inspection. The County will permit reasonable examination by the City's authorized representatives of all existing contractual obligations, physical systems, assets, real estate, rights-of-way, easements and inventories which are utilized by the County in connection with the Utility Systems. No such examination by the City's authorized representatives shall interfere with the County's operations of the Utility Systems or the day-to-day operations of the County's personnel. The County shall make these assets and records available for examination by the City's authorized representatives at reasonable times and upon prior written notice from the City (not less than forty-eight (48) hours in advance).

Such facilities will be properly maintained by the County within the custom and usage of the water and wastewater industry in Florida until the Closing Date.

7.7 Post Closing Collection. Notwithstanding anything herein to the contrary, following closing of this transaction, County shall be entitled to bill and collect for any water, wastewater and reclaimed revenues earned by or owed to County on or prior to the date of the closing. City shall notify utilities customers that failure of said customers to pay outstanding County utility bills will be treated as a delinquent account subject to a late fee or service disconnection if not promptly paid.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF CITY. The City represents and warrants to the County, as follows:

8.1 Authority for Agreement. The City has the authority and power to execute and deliver this Agreement and to carry out its obligations hereunder. The City has held all of the necessary public hearings to authorize the City's exercise of its option to purchase the Utility Systems.

8.2 Delivery of Resolution. City will deliver to County a certified copy of the minutes or any resolution of the City Council approving the City's execution and performance of this Agreement promptly after City's execution hereof, within ten (10) days after adoption of said Resolution by the City.

8.3 Inspections. All inspections of the Utility Systems by City or its representatives performed pursuant to this Agreement shall not materially interfere with the operation of the utility systems or the day-to-day activities of the County's personnel, and subject to Section 768.28, *Florida Statutes*, City agrees to indemnify and hold County harmless from any third party claims, actions, expenses, or damages, including costs and attorney's fees at trial and appeal, which the County incurs (for personal injury or property damage) as a direct result of the inspection of the Utility Systems pursuant to this Agreement by the City, its agents, contractors, representatives and/or employees.

8.4 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against City before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the City's right and ability to make and perform this Agreement; nor is the City aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding.

SECTION 9. ADDITIONAL CONDUCT PENDING CLOSING. The City and the County covenant with each other that pending the closing on this transaction, neither shall obstruct, hinder or interfere in the operation of the Utility Systems by the County or with the processing and consideration by governmental agencies of any applications or petitions filed by the County or City that are related to the Utility Systems. County shall execute all necessary documents to assist in securing necessary governmental approval(s) for the renewal, expanded

use, and transfer of said permit, and shall use its best efforts to assist the City in obtaining all such necessary governmental approvals as may be required to close this transaction and transfer permits and other assets of the Utility System to the City. Prior to Closing, neither the City, nor any of City's representatives, consultants, employees or agents shall file any application or petition with any governmental agency having jurisdiction over the Utility Systems.

SECTION 10. ADJUSTMENTS AND PRORATIONS; CLOSING COSTS. At the time of closing, the parties covenant and agree that the following adjustments shall be made:

10.1 Both the City and the County are exempt from real and personal property taxes. However, if any real and personal property taxes for year of closing are due on all real and personal property which is being conveyed by the County to the City, such taxes shall be prorated as of 11:59 p.m. of the Closing Date and shall be paid by the County. Since the City is exempt from ad valorem taxes on assets such as the Purchased Assets, the City shall not be charged with proration of any ad valorem taxes.

10.2 Within twenty one (21) days after the Closing Date, the County will render bills in its name to all customers for the last period of service through the Closing Date. All rates, fees, and charges for water and wastewater service through the Closing Date and the Utility System customer deposit held by County shall be the property of the County. The County shall include a written notice to each customer that the Utility Systems are being transferred to the City. All rates, fees, and charges for water and wastewater service after the Closing Date shall be the property of the City.

10.3 The County shall request all of its suppliers and vendors to submit final invoices for services, materials, and supplies, including electricity for the period up to and including the Closing Date. The County shall be responsible for, and shall provide to the City, upon request, evidence of the payment of all such invoices.

10.4 County represents that it does not hold any Connection Charges, as hereinafter defined, heretofore paid to County under any agreements for connections not yet made to the Utility Systems as of the Closing Date. County has entered into no agreements or commitments with developers or customers providing for the extension of services or facilities with regard to the Utility Systems except as set forth in Exhibit "11". City shall be entitled to receive all Connection Charges paid after Closing under those agreements, if any, set forth in Exhibit "12". The term Connection Charges shall mean connection, plant capacity, main extension, allowance for funds prudently invested ("AFPI") charges and/or capital charges ("Connection Charges").

10.5 All adjustments and prorations shall be calculated as of 11:59 p.m. of the Closing Date.

10.6 All costs of recording any releases, satisfactions or corrective instruments, if any, shall be paid by County.

10.7 Certified, confirmed or ratified special assessments or municipal liens prior to the date of this Agreement, if any, shall be prorated as of the date of Closing, will be paid by County.

10.8 Any taxes on gross receipts, regulatory assessment fees, or gain on sale incurred as of the Date of Closing shall be determined and paid by County.

10.9 If applicable, rents under any lease agreement assumed by City hereunder shall be prorated as of the date of Closing.

10.10 The bills for electricity and other utility services for the month in which this Closing shall take place shall be prorated between the parties at Closing and City shall make arrangements for the appropriate utilities to bill City for services rendered subsequent to the Closing.

10.11 All bills for other services, materials and supplies rendered in connection with the operation of the Utility Systems prior to Closing shall be prorated to the date of closing and shall be paid by County, and such costs incurred after closing shall be obligations of the City.

10.12 As public agencies, the City and County shall be exempt from documentary stamps. However, if any such documentary stamps are required on the deeds of conveyance of Property included in the Purchases Assets, such taxes shall be paid by City.

10.13 The cost of recording the deed(s) of conveyance shall be paid by City.

SECTION 11. ENVIRONMENTAL MATTERS.

11.1 The City has the right to perform environmental audits of the Property, including but not limited to, a Level I and Level II Environmental Audit, as such terms are generally understood by the environmental consulting industry in the State of Florida. These audits shall be performed at the City's expense. These environmental audits shall include, but not be limited to, appropriate borings, monitoring wells, soil and groundwater samplings, (and City shall restore the Property to its condition prior to any installation of monitoring wells or borings if City does not acquire the Property), "sniffer" tests, as well as an appropriate title search in order to determine that the sites are in full compliance with applicable local, state, and federal environmental and occupational health and safety statutes and regulations. After reviewing the environmental audits, the City may reasonably determine that the lands to be conveyed hereunder are not in full compliance with applicable local, state, and federal environmental and occupational health and safety statutes and regulations. City shall provide written notice to County of receipt of environmental audits, which notice shall identify the alleged non-compliance.

11.2 Following such receipt of the environmental audits, County shall have

ninety (90) days to undertake to cure such non-compliance; provided, in no event, shall County be required as a condition of this contract to undertake any such curative actions which County reasonably expects will require expenditure of a sum in excess of \$50,000.

11.3 In the event the anticipated costs to cure exceed \$50,000, County shall have the option of (i) undertaking such cure at its cost and expense and closing the sale with City, or (ii) terminating the Agreement with no further obligation by either party under this Agreement. In the event that an environmental clean-up is undertaken, then the date of the closing shall be extended until fifteen (15) days after the determination that the contamination has been removed by the agreed environmental or engineering consultant overseeing the clean-up, but not longer than two hundred seventy (270) days, or such period as the parties may agree.

SECTION 12. CLOSING/CLOSING DATE. The place of closing shall be in Orange County at the offices of the Orange County Attorney, 201 South Rosalind Avenue, 3rd Floor, Orlando, Florida, and such closing shall occur on or before **June 14, 2005** (the "Closing Date"). Notwithstanding anything to the contrary, the Closing of this transaction shall take place upon the delivery of the Purchase Price to the County in the manner and on the date provided for in this Agreement. Certain assets may be conveyed prior to the Closing Date as agreed by the City and the County. The closing of this transaction may be extended beyond the Closing Date in order to allow for the fulfillment of obligations set forth in this Agreement, but in no event beyond thirty (30) days from the Closing Date, unless mutually agreed in writing by the parties, or extended by provision of this Agreement.

SECTION 13. CLOSING DOCUMENTS AND PROCEDURES.

13.1 Deliverables from County. The following documents shall be delivered by the County to the City no later than ten days prior to closing, but shall be executed on the Closing Date:

a. County deeds to all of the Real Property owned by the County as described in Exhibit 2 conveying to the City all of the County's right, title and interest in all such property and warranting that such Property is free and clear of all liens, claims and encumbrances other than Permitted Exceptions, as that term is defined in Subsection 5.1 of this Agreement.

b. Instruments of conveyance of all the Easements as described in Exhibit 3 in appropriate recordable form conveying to the City all of County's right, title and interest in all such property, together with all utility improvements thereto, and warranting that such easement rights and rights to use dedicated rights-of-way are or shall be made pursuant to Subsection 6.3 hereof, free and clear of all liens, security interests, encumbrances, leasehold interests, charges or option, covenants or restrictions other than Permitted Exceptions, as that term is defined herein;

c. General assignment to and assumption by the City of all other interests in the Property, together with a general assignment of all Contracts, Agreements, permits and approvals as provided for and in the manner specified in this Agreement;

thereof to
in a form
against any liens,

records showing customer name; billing
number; last twelve (12) months
maintained as a customer

affidavit or certificate pursuant

acknowledgments

1. Evidence of insurance and an original executed certification and warranty
to the City as contemplated by subsection 6.13 hereof;

provided in Section 4 of this Agreement, subject to the prorations and adjustments and the creation of the escrows to be created by County as provided for herein. The City shall also deliver at the Closing the executed form of an assumption of the agreements, permits or governmental approvals required to operate the Utility System set forth in this Agreement, an assumption of the leases, permits, agreements, approvals and other interests in the Purchased Assets being assigned by the County, and a certified copy of a resolution of the City approving this transaction, if not previously delivered to County. Said documents shall be executed on or before the Closing Date, or as required by law or regulatory agency. The assignments and assumptions being prepared by the parties may be incorporated into one document (with appropriate exhibits as required) at the convenience and with the concurrence of the parties. City shall also deliver at Closing: (a) such affidavits and acknowledgments as the Title company shall reasonably request in order to cause said Title company to issue a title insurance policy evidencing a marketable title in City; (b) the appropriate County Officer's Certificate confirming that the warranties of City set forth in this Agreement applicable to the Closing are true and correct as of the Closing; and (c) such other instruments and documents as County's counsel may reasonably require, in form approved by City's counsel, in order to transfer possession and control of the Purchased Assets to City, provided that none of such documents shall result in any additional liability on the part of City not otherwise provided for in this Agreement.

SECTION 14. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS.

Each party hereto shall be responsible for its own attorney's fees, engineering fees, accounting fees and other costs in connection with the preparation and execution of this Agreement, the closing of the transaction contemplated herein and in connection with all judicial and administrative proceedings related to the acquisition of the Utility Systems.

SECTION 15. COMMISSIONS. The County and the City warrant to the other that the transaction contemplated by this Agreement is a direct, private transaction between the County and the City without the use of a broker or commissioned agent.

SECTION 16. FURTHER ASSURANCES. Each of the parties hereto agrees that, from time to time, upon the reasonable request of the other party and at the expense of the requesting party, without further consideration, it shall execute and deliver to the requesting party any and all further instruments, affidavits, conveyances and transfers as may be reasonably required to carry out the provisions of this Agreement.

SECTION 17. NOTICES; PROPER FORM. Any notices required or allowed to be delivered hereunder shall be in writing and may either be: (1) hand delivered, (2) sent by recognized overnight courier (such as Federal Express) or (3) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

CITY: John Land, Mayor
City of Apopka

P.O. Drawer 1229
Apopka, FL 32704-1229

With a copy to: Jack H. Douglas, Jr., City Administrator
City of Apopka
P.O. Drawer 1229
Apopka, FL 32704-1229

COUNTY: Michael L. Chandler, Director
Orange County Utilities Department
P.O. Box 1393
Orlando, FL 32802-1393

With a copy to: Robert D. Guthrie, Assistant County Attorney
Orange County Attorney's Office
201 South Rosalind Avenue, 3rd Floor
Orlando, FL 32801

Notices personally delivered by hand or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given five (5) days after deposit in the U.S. mail.

SECTION 18. ENTIRE AGREEMENT. This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

SECTION 19. AMENDMENT. Amendments to and waivers to the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

SECTION 20. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

SECTION 21. BINDING EFFECT. All of the provisions of this Agreement shall be enforceable by the legal representatives of the parties.

SECTION 22. TIME OF DELIVERY. This Agreement shall be delivered to the parties in accordance with the provisions of this Agreement.

SECTION 23. APPLICABLE LAW. This Agreement shall be construed, controlled,

and interpreted according to the laws of the State of Florida.

SECTION 24. CORROBORATION OF PAYMENTS AFTER CLOSING. In each instance in which either the County or the City is to receive money from another party after the Closing Date pursuant to the provisions of this Agreement, the party who is entitled to receive the money under the terms of this Agreement shall have the right to inspect, at its own expense, those books and records of the other party as may be necessary to corroborate the accuracy of the amount of money received by the party, within thirty (30) days of receipt of payment. In the event the party making the inspection discovers an error in payment, the party making the payment shall promptly transfer the difference in payment to the party who is entitled to payment; provided, however, that to the extent that the error in payment is ten percent (10%) or more, then the party making payment shall, in addition to paying the shortfall, reimburse to the party making the inspection the reasonable costs of the inspection.

SECTION 25. RADON GAS. RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

SECTION 26. SURVIVAL OF AGREEMENTS. All representations and warranties of the parties set forth in this Agreement shall survive the Closing.

SECTION 27. MISCELLANEOUS.

27.1 All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

27.2 Except for the provisions providing that City is obligated to purchase from County all of the Specified County Facilities and the Utility Systems and Sections 3.9 and 4 hereof, in the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect. If the terms set forth in the first clause of this Section are stricken by a Court, then this Agreement may be declared null and void by either party to it.

27.3 In the event of any litigation between the parties under this Agreement, each party shall be responsible for their own attorney's fees and court costs at all trial and appellate levels.

27.4 In construing this Agreement, the singular shall be held to include the plural the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year written below their signatures.

ATTEST: City Clerk

By: _____

Approved as to form and legality
(For use and reliance of the City):

Frank Kruppenbacher
City Attorney

CITY OF APOPKA
By: City Council

By: _____
John Land, Mayor

Date: _____

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Richard T. Crotty
Orange County Mayor

DATE: _____

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

S:\RGuthrie\AGRCNT\Apopka Zellwood Assignment\Asset Purchase and Sale - DLA Accepted Changes 04-11-05.rtf

DRAFT 04/13/05

ORANGE COUNTY/CITY OF APOPKA/ZELLWOOD STATION CO-OP,
INC.

**AGREEMENT FOR THE DELIVERY
AND USE OF RECLAIMED WATER**

THIS AGREEMENT is made and entered into on the ____ day of _____ 2005, between ~~ORANGE COUNTY, FLORIDA~~ the CITY OF APOPKA, a ~~charter county and political subdivision of the State of Florida~~ municipal corporation whose address is ~~201 South Rosalind Avenue, Orlando, Florida 32801-3547~~; (hereinafter referred to as the "COUNTY-"), and ZELLWOOD STATION CO-OP, INC. (hereinafter referred to as the "CO-OP").

WHEREAS, ~~COUNTY~~ CITY operates and maintains a publicly owned water reclamation facility (hereinafter called the "Facility") ~~purchased from the CO-OP under a separate, but related agreement which will in the future produce~~ reclaimed water ("Reclaimed Water") which may be used for productive and beneficial purposes as permitted by the Florida Department of Environmental Protection ("FDEP");

WHEREAS, CO-OP desires to use the Reclaimed Water for golf course irrigation on approximately _____ acres of land which it now owns and which is illustrated in Exhibit "A-1" attached hereto and made a part hereof by reference ("the Property"). Attached hereto as Exhibit "A-2" is the legal description of the Property;

WHEREAS, the ~~County~~ CITY will provide available reclaimed water to the CO-OP at a Connection Point ~~within twenty (20) feet of the Facility's boundary~~ designated on Exhibit "A-1" as "Connection Point";

WHEREAS, the CO-OP shall be responsible for transporting and delivering the reclaimed water from the Connection Point to the Property;

WHEREAS, the initial rates applicable to CO-OP shall be those established by Resolution of the ~~Apopka Board of County Commissioners~~ City Commissioners for the class of customers for which CO-OP qualified or which CO-OP has elected ~~and the assumption of the parties to this Agreement is CO-OP shall be Wholesale Customer, Interruptible Service with On-Site Storage.~~

WHEREAS, for the term of this Agreement, CITY shall be the exclusive provider of potable water and wastewater treatment to the CO-OP, and CITY and CO-OP agree that this

provision constitutes a part of the consideration from CO-OP to CITY under the separate Water, Wastewater and Reclaimed Water Service Area Agreement Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the commitment of the COUNTYCITY to deliver the Reclaimed Water to CO-OP and the commitment of CO-OP to receive and beneficially use the Reclaimed Water for the purposes set forth in this Agreement, and based on the foregoing premises, the parties agree to the following terms and conditions:

1. RECITALS TURETRUE AND CORRECT

Each of the foregoing recitals are acknowledged to be true and correct representations of the facts that support this Agreement.

1.2. TERM OF THE AGREEMENT

The COUNTYCITY shall deliver to the Connection Point and the CO-OP shall accept and use on the Property reclaimed water as set forth herein, produced by the COUNTYCITY ~~at the Facility~~. This Agreement shall be effective on the date of first delivery of reclaimed water and for a term of ten (10) years. The term of this agreement shall be renewed automatically from year to year beyond the initial term unless terminated by the CO-OP or COUNTYCITY by written notice not less than 180 days in advance of the term renewal.

2.3. RATE AND PAYMENT

- a. When such reclaimed water is available, the COUNTYCITY shall deliver the reclaimed water to the CO-OP pursuant to CountyCITY standards. The CO-OP will be invoiced for reclaimed water provided by the COUNTYCITY at the then-applicable rate charged to that category of reclaimed water customers into which the CO-OP falls in the applicable reclaimed water rate resolution adopted by the Board of Apopka County City Commissionersuncil. The CO-OP and the COUNTYCITY agree that the reclaimed water rates charged to the CO-OP by the COUNTYCITY will automatically change when the Board Apopka of County City Commissionersuncil amends the rates applicable to the category of user in which CO-OP fits. The COUNTYCITY ~~may terminate delivery of the reclaimed water for cause with no notice to the CO-OP if any invoice is not paid in full within sixty (60) days of the date of the notice~~ (This is addressed in Section 10.)
- b. Payment must be made to COUNTYCITY as shown on the bill.
- c. The CITY shall install a meter assembly at the connection point between the CITY's and CO-OP's system. Compensation for reclaimed water consumption will be paid to the CITY based on the appropriate meter size and in accordance with the meter charge schedule approved by the Apopka City Council.

~~4.~~ ~~3.~~ **COVENANT RUNNING WITH THE LAND**

Upon execution by both parties, this Agreement shall be binding as a covenant or condition, which shall run with the Property, and shall be binding upon any subsequent owner, successor or assigns of CO-OP.

~~4.~~ 5. **USE OF RECLAIMED WATER; CO-OP'S SYSTEM**

- a. The CO-OP shall use reclaimed water delivered by the COUNTYCITY for golf course irrigation. CO-OP shall immediately notify COUNTYCITY of its intent to change the use of the reclaimed water delivered to it by written notice describing, in detail, acceptable to the CountyCITY, how said reclaimed water shall be used. COUNTYCITY may approve or deny CO-OP's change of use request within 90 days of receipt of CO-OP's written notice. It shall be the CO-OP's responsibility to ensure that any and all such use of the reclaimed water shall be in compliance and consistent with current and future rules and regulations of the COUNTYCITY, Florida Department of Environmental Protection ("FDEP"), the applicable Water Management District, the CO-OP's Operating Practices Outlined in Exhibit "B", and other governmental or regulatory agencies having jurisdiction over the Property or the use of reclaimed water. In no event will the CO-OP allow the discharge of reclaimed water directly into surface waters of the state of Florida without the prior written authorization from the FDEP and the COUNTYCITY.
- b. The CO-OP agrees to install or modify distribution systems, within the Property, to the extent necessary, to allow the use of reclaimed water as a primary source of irrigation supply within the CO-OP's Property. The CO-OP recognizes by this agreement that the primary purpose of connection and use is the beneficial supplantation of groundwater withdrawal and the resultant benefit to the local aquifer and will therefore avail itself of this source as primary for irrigation purposes. Other sources shall be utilized only as emergency backup and secondary source upon any condition subject to paragraphs 5, 6 and 7 of this Agreement. The CO-OP will connect to the Connection Point at no cost to the COUNTYCITY. The meter assembly to be installed at the Connection Point shall be located in an easement provided by the CO-OP to the COUNTYCITY at a geographic location acceptable to the COUNTYCITY but within twenty (20) feet of the Facility's boundary. Said easement area shall be of sufficient size to allow COUNTYCITY to read, maintain, and replace said meter assembly. The COUNTYCITY shall have the right to review plans for the connection at the 90% completion point and request modifications to said plans. The CO-OP shall provide, in a manner approved by appropriate regulatory agencies, appropriate backflow prevention devices between the distribution system and any wells which are maintained by the CO-OP so that reclaimed water will not be discharged directly into groundwaters of the State of Florida. The CO-OP shall be solely

responsible for the ownership, operation, and maintenance of all portions of the distribution system. For the purposes of this Agreement, the "distribution system" is defined as the CO-OP's system of reclaimed water infrastructure built and operated for the purpose of conveying reclaimed water from the COUNTYCITY Connection Point to and within the Property. CO-OP shall agree to implement, maintain and renew any permits, licenses or other programs required by state, regional or federal regulatory agencies to continue or expand the CO-OP's reclaimed water system.

- c. If monitoring is required pursuant to the use of reclaimed water for the Property, the CO-OP is responsible at its expense for collecting, analyzing, and reporting all required information to the COUNTYCITY, the FDEP, and/or any other governmental agency requiring such monitoring.

5.6. WATER QUALITY

- a. The COUNTYCITY will deliver, to the CO-OP, reclaimed water of a quality consistent with the requirements for "public access" treatment levels described in the rules of the FDEP, Chapters 62-600 through 62-650, Florida Administrative Code.
- b. The CO-OP shall be wholly responsible for the continuing determination of the suitability of use for their purposes. The CO-OP has the right to stop acceptance of the reclaimed water if they deem it not suitable for their purpose based upon objective criteria.

7. VOLUME OF WATER; DELIVERY SCHEDULE

- a. The CO-OP agrees that the reclaimed water furnished from the COUNTYCITY's ~~wastewater-treatment-plant~~ system pursuant to the provisions of this Agreement shall be the primary source of water used by the CO-OP for irrigation of their golf course. The CO-OP's golf course anticipated annual average irrigation demand is approximately 700,000 gallons per day. The COUNTYCITY agrees to provide a volume of reclaimed water at least equivalent to an average of 150,000 gallons per day. The COUNTYCITY reserves the right to limit the flow, subject to the above minimum daily average over a period of 30 days. If sufficient reclaimed water is not available due to lack of production at the COUNTYCITY's plant, the CO-OP shall have the full right to supplement irrigation flow as described in Paragraph 6.b.
- b. CO-OP shall have the right and responsibility of controlling the flow of reclaimed water into its system on "as needed" basis and to store such water in CO-OP's holding ponds for irrigation purposes. The COUNTYCITY also acknowledges

and agrees that the CO-OP shall have the full right and authority, subject to proper permitting by the appropriate regulatory agencies, to utilize the lake systems, wells or other resources of the CO-OP, as additional water sources for irrigation purposes on their golf course area.

- c. The CO-OPCITY shall install the turnout and all appurtenances thereto at its expense along with a flow meter at the eConnection pPoint(s) so that the volume of water delivered can be monitored. The CO-OP's distribution system shall be connected to the COUNTYCITY's system at the Connection Point ~~but at a location ultimately approved by the COUNTYCITY~~. The CO-OP agrees to provide necessary easements in a form agreeable to COUNTYCITY for the construction, operation and maintenance of any required countyCITY piping and appurtenances and the meter assembly at the Connection Point.
- d. The COUNTYCITY shall begin delivering reclaimed water on such date as mutually agreed upon between the parties.

7.8.DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS

- a. All parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery.
- b. All parties also recognize that adverse weather conditions or unforeseen circumstances may result in a need for reclaimed water greater than the volume of water set forth in Paragraph 6. The CO-OP shall have the right to draw additional water, subject to availability of reclaimed water as determined by the COUNTYCITY. During certain adverse conditions, the COUNTYCITY may restrict or curtail the use of reclaimed water by the CO-OP until the adverse conditions have passed. During these periods, system-operating levels may be significantly reduced from normal levels. These reductions may include, but not be limited to, the volume and pressure of the reclaimed water supplied to CO-OP. During, and after such an event, the supply of reclaimed water may be curtailed or discontinued solely at the discretion of the COUNTYCITY. COUNTYCITY shall notify CO-OP in writing, in advance of their intent to curtail, disrupt, interrupt or limit the delivery of reclaimed water. If advance notice to the CO-OP is not practical then the COUNTYCITY shall provide oral notice to the CO-OP within twenty-four (24) hours after exercising this right.
- c. If the CO-OP's transmission or distribution system fails for reasons or events beyond the CO-OP's control, then acceptance of reclaimed water, under the requirements of this Agreement, may be interrupted or limited in quantity. CO-OP shall notify COUNTYCITY, in writing, in advance of their intent to curtail, disrupt, interrupt or limit the acceptance of reclaimed water. If advance notice to the COUNTYCITY is not practical, then the CO-OP shall provide oral notice to the COUNTYCITY within twenty-four (24) hours after exercising this right.

8.9. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS

If for any reason during the term of this Agreement and through no fault of the CO-OP, local, regional, state or federal governments, agencies or courts (other than the parties to this Agreement) shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water by the CO-OP, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement or significantly increase the cost to the COUNTYCITY, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible or necessary, by the parties hereto in conformity with such permits, approvals, or requirements.

9.10. TERMINATION OR ASSIGNMENT

- a. COUNTYCITY shall have the right to transfer all or any part of the treatment, transmission or distribution facilities to another Party. COUNTYCITY may assign all or any part of their rights and obligations under this Agreement to an alternate Party who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.
- b. The CO-OP shall have no right to assign this Agreement to any parcel of land not included in the Property, and any attempted assignment shall be void and of no effect or alternatively shall be treated by the COUNTYCITY as a material breach entitling the COUNTYCITY to terminate the Agreement.
- c. The COUNTYCITY may terminate this Agreement for cause, with thirty (30) days prior written notice to the CO-OP, if any invoice is not paid in full within ninety (90) days of the date of the invoice as described above. Any invoice not paid within thirty (30) days shall accrue interest at the rate of one and one-half (1½) percent per month, prorated for any part of a month. The obligation of the CO-OP to pay past due sums shall survive termination of this Agreement.

10.11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

The COUNTYCITY does not represent or warrant that the volume or quality of reclaimed water delivered will increase the productivity of the Property. Furthermore, COUNTYCITY will not be responsible for changes to the land or vegetation of any kind due to the distribution of reclaimed water. The CO-OP has secured independent advice on the introduction of reclaimed water upon the Property and shall make an independent judgment as to the water quality described in Paragraph 5 and volume of water described in Paragraph 6.

11.12. NOTICES

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses listed below:

CO-OP:

Zellwood Station CO-OP, INC.
2126 Spillman Drive
Zellwood, Florida 32798-9799

COUNTY CITY:

~~Director of Utilities John Land, Mayor~~
~~Orange County Utilities Department City of Apopka~~
~~P.O. Box 1229~~
~~Suite 400~~
~~109 East Church Street~~
~~Orlando Apopka, Florida 32801-3317 404-12298~~

WITH A
COPY TO:

County Administrator

~~Jack Douglas, City Administrator Orange County Administration Office, 5th Floor~~
~~City of Apopka~~
~~P.O. Box 1229~~
~~Apopka, Florida 32704-1229~~
~~201 South Rosalind Avenue~~
~~Orlando, Florida 32801-3547~~

12.13. INSPECTION

The COUNTYCITY shall have the right, upon written or oral notice to the CO-OP and when reasonably necessary, to enter upon the lands upon which the CO-OP distribution system is located to review and inspect (1) the CO-OP's operating practices as they relate to this Agreement; and, (2) any backflow prevention devices between the CO-OP's system and any well which is maintained by the CO-OP.

13.14. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

14.15. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effectuated; provided specifically however, that it is COUNTYCITY's right to collect the sums described in Paragraph 2 of this Agreement, if this right to collect such sums is declared unenforceable, then COUNTYCITY's obligations to deliver reclaimed water may be unilaterally terminated by COUNTYCITY.

15.16. NON-WAIVER

The failure of any party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release such other parties from their duties to comply with such obligations in all other instances.

16.17. LAND USE APPROVALS

This Agreement shall not be construed as granting or assuring or indicating any future grant of any land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the Property.

17.18. INDEMNITY

The COUNTYCITY shall be indemnified by the CO-OP from any and all claims, demands, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys' fees (and fees on appeal) arising out of, or relating to, the CO-OP's failure to

comply with the terms and conditions of this Agreement, as well as failure to utilize the reclaimed water in accordance with the current and future rules and regulations of the COUNTYCITY, FDEP and other governmental or regulatory agencies having regulatory jurisdiction over the Property, and the operating practices set forth in Exhibit "B" attached.

18.19. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, governed by, and interpreted according to the laws of the State of Florida. Any litigation arising out of this Agreement shall be had in the federal or state courts located and lying within Orlando, Orange CountyCITY, Florida.

19.20. EXHIBITS

This Agreement incorporates the following exhibits and addenda, which are specifically made a part hereof:

Exhibit A-1 - Property Illustration

Exhibit A-2 - Property Legal Description

Exhibit B - Operating Practices

20.21. RECORDING

This Agreement, including the Exhibits thereto, shall be recorded in the Public Records of Orange CountyCITY, Florida. The CO-OP shall bear the costs of such recording.

21.22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties and shall supersede and replace any and all prior or contemporaneous representations, negotiations, statements, understandings, or agreements between the parties, whether verbal or written, relating to the matters set forth herein and the execution of this Agreement and are merged into this Agreement. The parties hereto fully understand the terms and conditions of this Agreement, have entered into this Agreement voluntarily and have received or had the opportunity to receive independent advice and legal counsel. This Agreement has been executed by the authorized representative of each party on the date written above.

FLORIDA APOPKA

ORANGE COUNTYCITY OF

By: Board of County Commissioners

~~Richard T. Crotty~~ John Land
~~County Chairman~~ Mayor

~~Martha O. Haynie, Orange County Comptroller
as Clerk to the Board of County Commissioners~~

Deputy City Clerk

ZELLWOOD STATION CO-OP, INC.

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument as acknowledged before me this ____ day of _____, 200__, by _____ (name of person) as _____ (type of authority) for Zellwood Station Co-Op, Inc. who is personally known to me [] or has produced _____ as identification.

NOTARY PUBLIC

Print Name: _____
My Commission expires: _____

~~SA Raulo AGRENTZER Agreement_Draft 10-11-02.doc (10/14/02)~~

EXHIBIT "A-1"
Property Illustration

Map depicting the CO-OP's golf course area for reclaimed water irrigation and its surroundings.

To be prepared by the CO-OP.

EXHIBIT "A-2"
Property Legal Description

Legal description of the CO-OP's golf course area to be used for reclaimed water irrigation.

To be prepared by the CO-OP.

1

EXHIBIT "B"

Operating Practices

The intent of this Exhibit is to identify and define practices for the use of reclaimed water, which protect human health and the environment.

1. Appropriate advisory signs shall be posted around the sites utilizing reclaimed water by the CO-OP to designate the nature of the water and its non-potability. The signs shall be posted in accordance with current FDEP rules and regulations. The CO-OP is responsible for obtaining, installing and maintaining and ensuring signs are posted in accordance with applicable rules pertaining to such signage for the life of this Agreement.

2. The CO-OP will also take all reasonable precautions, including signs, labeling, and color-coding to clearly identify reclaimed water systems to prevent inadvertent human consumption. The signs, labeling, and color-coding shall be in accordance with applicable FDEP regulations.

3. No cross-connections shall be made between the reclaimed water system and a potable water system or any well. Should a well or any other potable water source be on the property as a backup system, the owner of the well shall separate the reclaimed system from the groundwater (the well) or potable water system by installing a backflow prevention device in accordance with all state, local and County/CITY regulations.

4. A buffer as required by FDEP, the COUNTY/CITY and all other applicable agencies shall be maintained between the edge of the wetted area of the reclaimed water irrigation system application site and any existing or approved (but not yet constructed) potable water supply wells.

5. The use of reclaimed water shall be consistent with all FDEP and other applicable regulatory agency rules.

6. The CO-OP shall operate its system such that reclaimed water does not discharge off-site, either directly or through a stormwater drainage system.

7. The CO-OP shall use the reclaimed water and operate its system in accordance with the rules and regulations, as they exist now and as they may be amended or implemented in the future, of the COUNTY/CITY, FDEP, the applicable water management district, and other governmental or regulatory agencies having jurisdiction.

8. The CO-OP shall have and maintain a Reduced Pressure Zone (RPZ) Principle back flow preventer at the point of service of the potable water system and is responsible for its inspections and operation according to all applicable federal, state and local Cross Connection Control ordinances and regulations.

9. As a minimum, the CO-OP shall adhere to the following standards. Any changes to applicable FDEP or EPA rules and regulation shall supersede these limitations.

PROTECTION MEASURES

WELLHEAD PROTECTION AREA

The U.S. Environmental Protection Agency (USEPA) defines a wellhead protection area as "surface and subsurface areas surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water wells or well fields."

Studies indicate that the principal source of groundwater recharge in the Zellwood Station area is infiltration precipitation. The principal source of groundwater discharge is groundwater flow through aquifer materials down-gradient of the well field areas in addition to withdrawal for water supply.

By execution of this agreement, CO-OP recognizes ~~County~~CITY's commitment to protect all sources of potable water supplies and the need to preclude contamination thereof. CO-OP and any agent, contractor, associate, future owner or partner agree to abide by, uphold and honor all restrictions and provisions of this exhibit in perpetuity.

PROTECTION

CO-OP agrees to abide by all provisions of F.A.C. 62-521 including existing and future subsections as they pertain to Community Water System supply wells.

The CO-OP further recognizes and agrees to the reclaimed water usage measures and restriction as described in F.A.C. 62-610-421.

All planned and future development of areas adjacent to the existing water supply wells shall be in compliance with these provisions.

ENCROACHMENT

No sanitary hazards as defined in FDEP rules shall be permitted nor constructed without appropriate permits, waivers and approval by the ~~County~~CITY, FDEP, and any other jurisdictional entity. These provisions apply equally to the raw water transmission mains connecting the supply wells to the Water Supply Facility.

S:\RGuthrie\AGRCNT\Apopka Zellwood Assignment\Delivery and Use of Reclaimed Water RDC & DAL changes 4 14 05.doc

DRAFT 04/13/05

**ORANGE COUNTY/CITY OF APOPKA/ZELLWOOD STATION CO-OP, INC.
WHOLESALE POTABLE WATER AND WASTEWATER AGREEMENT**

~~ORANGE COUNTY/CITY OF APOPKA/ZELLWOOD STATION CO-OP.~~
WHOLESALE POTABLE WATER AND WASTEWATER AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into on the _____ day of _____, 2005~~3~~, by and between ~~ORANGE COUNTY, FLORIDA, a political subdivision and charter county of the State of Florida~~ THE CITY OF APOPKA, a Florida municipal corporation, (hereinafter referred to as "COUNTY"), and ZELLWOOD STATION CO-OP, INC., a corporation not for profit, organized under the laws of the State of Florida (hereinafter referred to as "CO-

~~CO-OP~~ pursuant to a separate

~~treatment and supply of potable water; and~~

WHEREAS, the ~~COUNTY~~ has purchased from the CO-OP, pursuant to a separate, independent Purchase and Sale Agreement, the wastewater facilities for the treatment and disposal of domestic wastewater; and

WHEREAS, the CO-OP owns the Water Distribution System and the Wastewater Collection System and will continue to provide retail water and wastewater service including billing and customer service in the area defined as the CO-OP Service Area depicted on Exhibit A of this Agreement; and

WHEREAS, following sale of the water and wastewater treatment facilities connection by the CO-OP to the COUNTY, the CO-OP will become a wholesale potable water and wholesale wastewater customer of the COUNTY; and

WHEREAS, this Agreement is being negotiated to provide the parties certainty with regard to availability of water and wastewater services on a wholesale basis to the CO-OP from the COUNTY/CITY and the certainty of a wholesale customer for the COUNTY/CITY pursuant to the terms of this Agreement; and

WHEREAS, for the term of this Agreement, COUNTY/CITY shall be the exclusive provider of potable water and wastewater treatment to the CO-OP, and COUNTY/CITY and CO-OP agree that this provision constitutes a part of the consideration from CO-OP to COUNTY/CITY under the

separate Water, Wastewater and Reclaimed Water Service Area Agreement ~~Purchase and Sale Agreement~~.

WHEREAS, this Agreement will be contingent upon the execution of the City of Apopka/Orange County Water and Wastewater Systems Asset Purchase and Sale Agreement (hereinafter the "Purchase Agreement") and execution of the City of Apopka/Zellwood Station Co-Op Water, Wastewater and Reclaimed Water Service Area Agreement (hereinafter the "Service Agreement") executed at or upon the sale by the CO-OP to the COUNTY of the water facilities and the wastewater facilities in accordance with that separate Purchase and Sale Agreement.

NOW, THEREFORE, be it agreed by and between the parties as follows:

1. **Recitals True and Correct.** Each of the foregoing recitals are acknowledged to be true and correct representations of the facts that support this Agreement; ~~provided specifically, however, that this Agreement shall only be valid if COUNTY purchases the CO-OP's Water and Wastewater Treatment Facilities.~~

2. **Purpose of the Agreement.** The purpose of this Agreement is to memorialize certain terms and conditions under which the CO-OP and the COUNTYCITY will:

(a)(a) Specify the relationship between the CO-OP and the COUNTYCITY whereby CO-OP agrees that COUNTYCITY, for the term of this Agreement, will be the exclusive wholesale provider of potable water and wastewater treatment services to CO-OP for its customers in the Service Area depicted on Exhibit A attached hereto and by this reference made a part hereof; and

(b) Identify the Connection Points and delineation of responsibilities between the COUNTYCITY's facilities and the CO-OP's systems; and

(c) Identify and establish the initial wholesale rates for Wholesale Potable Water Service and Wholesale Wastewater Service from the CITY to the CO-OP.

3. **Definitions.** The following definitions shall have the meanings ascribed hereto for the purposes of this Agreement. The relevant definitions are listed in alphabetical order as follows:

(a) *Annual Average Daily Flow* shall mean for potable water flow, the number derived by dividing the total potable water use during the year by 365 days; and for wastewater flow, shall be the number derived by dividing the total wastewater flow during the year by 365 days.

(b) *Connection Point* shall mean a mutually agreed point where the CO-OP's Water Distribution System meets the COUNTYCITY's Water Facilities or a mutually agreed point where the CO-OP's Wastewater Collection System meets the COUNTYCITY's Wastewater Facilities. Also, a Connection Point constitutes the boundary location where the maintenance and ownership rights are divided between the CO-OP and the COUNTYCITY.

(c) *CO-OP's Service Area* shall mean the new certified retail service area for the CO-OP after deleting the undeveloped parcels. This area is described in the map and legal description presented in **Exhibit A**.

(d) *CO-OP's Water Distribution System* shall mean all the water pipes, valves, customer meters and any other appurtenances, owned and maintained by the CO-OP, required for the delivery of potable water from the Connection Point to the CO-OP's retail customers.

(e) *CO-OP's Wastewater Collection System* shall mean all the wastewater gravity pipes, manholes, forcemains, valves, pump stations, and any other structures and appurtenances, owned and maintained by the CO-OP, required to transport wastewater from the CO-OP's retail customers property lines to the Connection Point.

(f) *COUNTYCITY's Capital Charges* shall mean the water Capital Charge established by and the wastewater Capital Charge established by the Orange COUNTYCITY Water and Wastewater Capital Charge Ordinances.

(g) *COUNTYCITY's Wastewater Facilities* shall mean the wastewater facilities required by the COUNTYCITY to transport and treat domestic wastewater from the Connection Point.

(h) *COUNTYCITY's Water Facilities* shall mean the potable water facilities required by the COUNTYCITY to supply and deliver potable water to the CO-OP at the Connection Point.

(i) *CUP* shall mean the COUNTYCITY's Consumptive Use Permit issued by the St. Johns River Water Management District.

(j) *ERU* shall mean Equivalent Residential Unit as defined in the Orange COUNTYCITY's Water Capital Charge Ordinances. One ERU is equal to a flow of 300 GPD Annual Average Daily Flow.

(k) *Fire Flow Condition* shall mean flow of 952 gallons per minute (GPM) at the

Connection Point.

(l) *Master Meter Assembly* shall mean an above-ground water or wastewater device including piping, valves, meters and other appurtenances built for the purpose of measuring flow.

4. CO-OP Responsibilities.

(a) CO-OP shall be responsible for billing and providing all customer service, notifications and education services to the CO-OP's retail customers.

(b) CO-OP shall comply with all federal, state and local rules, regulations, statutes or directives of public health and environmental authorities with regard to the operation, maintenance and improvements to the CO-OP's Water Distribution System and to the CO-OP's Wastewater Collection System.

(c) The COUNTYCITY shall install and pay all costs for Master Meter Assemblies and other interconnect devices including backflow preventers, at each water or wastewater Connection Point. All Master Meter Assemblies shall be located within either a COUNTYCITY right-of-way or a utility easement dedicated by the CO-OP large enough for the maintenance and operation of the facilities. Master Meter Assemblies shall have a master water meter or a master wastewater meter depending on the flow being measured. When required, the CO-OP shall dedicate any easement in recordable form acceptable to the COUNTYCITY a sufficient area around said Master Meter Assemblies to allow the COUNTYCITY to read, service, maintain and replace the Master Meter Assemblies.

(d) The CO-OP shall be responsible for the installation and maintenance of all facilities on the CO-OP side of the Connection Point that may be required to meet federal, state and local environmental and public health requirements assuring water quality, including, but not limited to, such devices as back-flow preventers necessary to avoid the potential for cross-connection and contamination of the potable water system.

(e) Meter Assemblies shall be the property of the COUNTYCITY and shall not be disturbed or utilized by the CO-OP. Upon installation, the metering equipment shall be the property of the COUNTYCITY, and the COUNTYCITY shall be responsible for the operation, maintenance, and replacement of the meter. The COUNTYCITY shall read the meter for billing purposes. The water and wastewater metering equipment shall meet the COUNTYCITY's standards and be manufactured by one of the COUNTYCITY's approved manufacturers for utilities materials. Flow meters shall have an accuracy of 1% when measuring flows between 5% and 100% of the rated maximum flow velocities of the meter. The water meter shall meet the latest standards of the American Water Works Association (AWWA) for compound fire service master meters or AWWA

standard C703. The wastewater meter shall be magnetic flow meter type. The CO-OP may request an accuracy test by the COUNTYCITY without charge once during any twelve (12) month period. Testing accuracy must meet the specifications of AWWA M-6 "Meter Selection, Installation, Testing and Maintenance." The CO-OP may witness the test. Additional testing may be requested by the CO-OP at the COUNTYCITY's established cost for such tests. Copies of the test results will be provided to the CO-OP within thirty (30) days of the test. There will be no charge for tests that discover an inaccurate meter. If an inaccurate meter is found, as defined by the AWWA, bill adjustments will be made for one-half (1/2) of the preceding period since the last accuracy test, but in no case shall the preceding period exceed twelve (12) months.

5. Wholesale Potable Water Service.

(a) The COUNTYCITY agrees to provide and transport to the Connection Point(s) bulk quantities of potable water that has been treated to meet federal and state standards. The COUNTYCITY will provide an Annual Average Daily Flow of potable water not to exceed the annual allocation approved in CO-OP's secondary user CUP for use by the CO-OP within its service area for retail resale purposes. The CO-OP service area is depicted on Exhibit A. This flow will be allocated for 1,006 existing mobile homes, 190 future mobile homes, sales office, club house, maintenance barn, church and other connected customers as of April, 2003. The maximum flow to be provided by the COUNTYCITY during one calendar year at the Connection Point(s) shall not exceed 560,000 GPD. Under normal operating conditions, the COUNTYCITY would operate its water treatment facility at about 60 PSI. The COUNTYCITY will provide a minimum pressure of 40 PSI at the Connection Point. Under Fire Flow Conditions, the COUNTYCITY will provide up to 450,000 GDP plus an additional 952 GPM with a minimum pressure of 35 PSI at the Connection Point.

(b) COUNTYCITY shall have no operation or maintenance responsibility for any water facilities on the CO-OP's side of the Connection Point(s). The parties acknowledge and agree that the CO-OP shall be responsible for the direct and adequate delivery of potable water from the water Connection Point(s) to its retail customer property lines. The CO-OP shall own, maintain, repair and improve the CO-OP Water Distribution System as needed to provide adequate retail service to the CO-OP's retail customers. The CO-OP shall own, maintain, repair and improve the CO-OP Water Distribution System as needed to provide adequate retail service to the CO-OP's retail customers.

(c) The CO-OP agrees to cooperate with the COUNTYCITY's operational measures and to make every operational, billing and educational effort within its control to limit or reduce its retail customer's potable water use as necessary to stay within the COUNTYCITY's CUP compliance limits. This includes, but shall not be limited to compliance with the COUNTYCITY's Water Conservation Ordinance and CO-OP shall be required to install and maintain individual meters at every retail customer connection to the CO-OP's Water Distribution System for the purpose of monthly billing on the basis of individual use and to require potable water conservation.

(d) The COUNTYCITY shall have the right to limit the flow to the CO-OP, through all operational measures within its control, such that the flows to the CO-OP do not exceed the CO-OP's secondary permit water allocation and do not cause the COUNTYCITY to exceed its maximum daily or maximum annual ground water withdrawals limits stated in the COUNTYCITY's CUP. Further, notwithstanding the provisions in section 5(f), if the St. Johns River Water Management District reduces the CUP allocation to the COUNTYCITY, for the CO-OP service area, or reduces the CO-OP's secondary permit allocation, the COUNTYCITY shall have the right at any time during this agreement, to adjust the CO-OP's allocation proportionately.

(e) The initial Connection Points shall be located as defined on Exhibit B. Any future Wholesale Potable Water Service Connection Point(s) necessary to serve the CO-OP's customers will be determined based on construction drawings acceptable to the COUNTYCITY. COUNTYCITY agrees to pay the cost of installation of the initial Connection Points' Master Meter Assemblies and the CO-OP shall dedicate easements sufficient to allow the COUNTYCITY to read, maintain, and replace said assemblies, as necessary. The requesting party, upon mutual agreement, shall pay for the cost associated with any subsequent Connection Points and Master Meter Assemblies.

(f) The CO-OP's existing retail customers located within CO-OP's service area set forth in Exhibit A, have been exempt from paying the COUNTYCITY's Capital Charge. These exempt units are allocated for 1006 active mobile homes, a clubhouse, sales office, church, maintenance barn and other connected customers as of April, 2003. The parties agree that, within the CO-OP's Service Area, there are 190 additional mobile home sites platted and that no water Capital Charges will be due and owing for these customers.

(g) All parcels, not included in the CO-OP's Service Area, as shown on Exhibit A, shall be retail customers of the COUNTYCITY and be subject to all COUNTYCITY ordinances, rates and resolutions, including but not limited, to paying water Capital Charges to the COUNTYCITY.

(h) For those customers within the CO-OP's Service Area, the COUNTYCITY agrees to provide Wholesale Potable Water Service to the CO-OP, and the CO-OP agrees to pay the COUNTYCITY a Wholesale Potable Water Service rate for the potable water provided by the COUNTYCITY under the terms of this Agreement. Such wholesale rate initially shall be \$1.37 per thousand gallons, so long as the volume delivered to the CO-OP does not exceed one-twelfth (1/12) of the initial secondary user CUP permit annual allocation, commencing at the beginning of the Service Term. If such allocation is exceeded in any month, then the rate described below in Section 5(i) shall apply. The wholesale rate shall increase annually at the same percentage, if any, which the COUNTYCITY's retail rate increases for other potable water customers in the Orange COUNTYCITY's Service Area during the current year of the Service Term.

(i) The CO-OP agrees to take all necessary steps to not exceed its allocation under its secondary user CUP. However, if the allocation is exceeded, the CO-OP agrees to pay the COUNTYCITY a wholesale conservation rate for monthly flows exceeding one-twelfth (1/12) of the annual allocation approved in CO-OP's initial secondary user CUP. The initial wholesale conservation rate shall be \$2.27 per thousand gallons commencing at the beginning of the Service Term. In addition, CO-OP agrees to pay annually the sum of \$.43 per thousand gallons for volume exceeding for the calendar year the current annual water allocation under CO-OP's initial secondary user CUP. These wholesale conservation rates shall increase annually at the same percentage, if any, which the COUNTYCITY's retail rate increases for other potable water customers in Orangethe COUNTYCITY's Service Area during the current year of the Service Term.

(j) The COUNTYCITY will invoice the CO-OP for all potable water charges on a monthly basis. Payment is due to the COUNTYCITY within 30 days of the invoice date.

6. Wholesale Wastewater Service.

(a) The COUNTYCITY agrees to receive, treat and dispose of 245,400 GPD Annual Average Daily Flow of domestic wastewater from customers within the CO-OP's Service Area (Exhibit A). The CO-OP shall deliver the wastewater flow to the Connection Point(s) with adequate pressure to reach the COUNTYCITY's treatment facilities. This flow corresponds to the 817.732 ERUs of 1006 existing mobile homes, 190 future mobile homes, sales office, club house, maintenance barn, church and other connected customers.

(b) COUNTYCITY shall have no operation or maintenance responsibility for any wastewater facilities on the CO-OP's side of the Connection Point(s). The CO-OP shall be responsible for the direct collection and transport of Domestic Wastewater from its retail customer property lines to the wastewater Connection Point(s). The CO-OP shall own, maintain, repair and improve the CO-OP's Wastewater Collection System as needed to provide adequate retail service to the CO-OP's retail customers.

(c) The initial Connection Point shall be located as defined on Exhibit B. Any future wholesale wastewater service Connection Points necessary to serve the CO-OP's customers will be determined based on construction drawings acceptable to the COUNTYCITY. COUNTYCITY agrees to pay the cost of installation of the initial Master Meter Assembly(s) and CO-OP shall dedicate to the COUNTYCITY easement(s) sufficient to allow the COUNTYCITY to read, maintain, and replace said assembly(s), as necessary. For future additional meters or Connection Points, the requesting party shall pay for the cost associated with any subsequent Connection Points and Master Meter Assemblies.

(d) The CO-OP's existing retail customers located within CO-OP's service area set forth in Exhibit A, have been exempt from paying the COUNTYCITY's Capital Charge. These exempt units are 691.002 ERUs for 1006 active mobile homes, a clubhouse, sales office, and

maintenance barn. The parties agree that, within the CO-OP's Service Area, there are 190 additional mobile-home sites platted and that no Capital Charges will be due and owing for these customers, provided they develop and connect to the CO-OP's Wastewater Collection System and that their development needs do not exceed 126.730 ERUs. This totals 817.732 ERUs exempt from Wastewater Capital Charges. As one ERU equals 300 GPD per definition, the 817.732 ERUs equal an exempted flow of 245,400 GPD. Should the wastewater needs of the existing CO-OP retail customers increase beyond 245,400 GPD Annual Average Daily Flow, the COUNTYCITY shall be paid by the CO-OP Capital Charges for the flow exceeding the 245,400 GPD allocated to the CO-OP.

The Capital Charges will only be assessed once each calendar year based on the CO-OP's annual water flow. The CO-OP shall only pay for the amount in excess of the sum of 245,400 GPD plus any amount for which they have already paid Capital Charges.

(e) All land parcels, not included in the CO-OP's Service Area, shall be retail customers of the COUNTYCITY and be subject to all COUNTYCITY ordinances, rates and resolutions, including but not limited, to paying wastewater Capital Charges to the COUNTYCITY.

(f) For those customers within the CO-OP's Service Area, the COUNTYCITY agrees to provide Wholesale Wastewater Service to the CO-OP, and the CO-OP agrees to pay the COUNTYCITY a Wholesale Wastewater rate for the wastewater taken by the COUNTYCITY under the terms of this Agreement. Such wholesale rate initially shall be \$3.35 per thousand gallons, commencing at the beginning of the Service Term. The wholesale rate shall increase at the same percentage, if any, which the COUNTYCITY's retail rate increases for other wastewater customers in Orange County's Service Area during the current year of the Service Term.

(g) The COUNTYCITY will invoice the CO-OP for all wastewater charges on a monthly basis. Payment is due to the COUNTYCITY within 30 days of the invoice date.

7. COUNTYCITY's Retail Service Area.

(a) (a) The COUNTYCITY and the CO-OP agree that the CO-OP shall not serve any customers outside of CO-OP's Service Area. The COUNTYCITY and the CO-OP agree that all development outside the CO-OP's Service Area, as depicted on Exhibit A, which is eventually to be served by the COUNTYCITY, shall be subject to all COUNTYCITY's ordinances, rates and resolutions, including but not limited to the payment of Capital Charges and retail rates for water and wastewater service.

(b) (b) Should customers outside the CO-OP's Service Area request that the CO-OP provide water or wastewater service, the CO-OP agrees to refer such customers to the COUNTYCITY.

8. **Service Term of the Agreement.** The initial service term for Wholesale Potable Water and Wastewater Services provided by the COUNTYCITY to the CO-OP for those customers within

the CO-OP's Service Area; shall be for a period of twenty (20) years, commencing upon the date the COUNTYCITY begins delivering services to the CO-OP pursuant to this Agreement. The service term may be renewed thereafter on terms and conditions mutually agreed upon by the parties.

9. Breach of this Agreement and Termination.

(a) COUNTYCITY has the obligation to provide Wholesale Potable Water Service and Wholesale Wastewater Service, as defined in this agreement to the CO-OP. Should the COUNTYCITY fail to carry out its obligations under this Agreement, the appropriate remedy would be an action for specific performance and declaration of rights between the parties. The COUNTYCITY's agreement to provide services is contingent upon the obligation of the CO-OP to pay the COUNTYCITY the sums established herein. In the event the CO-OP fails to pay the potable water or wastewater charges, the COUNTYCITY's remedies are cumulative and may be exercised individually or in combination with additional remedies outline herein.

(b) CO-OP has the obligation to pay for wholesale water and wastewater services provided by COUNTYCITY to CO-OP pursuant to this Agreement. In addition, CO-OP has the obligation pursuant to this Agreement and applicable generic law to properly convey or deliver potable water and to properly transport, convey and process through its wastewater lines, and properly deliver wastewater to the Connection Point. Failure of CO-OP to fulfill these and other affirmative obligations imposed upon CO-OP by this Agreement, applicable water or wastewater permits, and generic law shall be a basis for COUNTYCITY terminating this Agreement.

(c) As an additional remedy of COUNTYCITY, in the event the CO-OP fails to pay the wholesale rates established herein in a timely manner, the CO-OP shall pay to the COUNTYCITY a service charge of one and one-half percent (1.5%) per month for each day after the 31st day that payments under this Agreement are not received by the COUNTYCITY from the CO-OP. In addition, the COUNTYCITY has additional remedies that include any one or more of the following:

(1) For any sums not paid after sixty (60) days of their due dates, the CO-OP agrees that the COUNTYCITY, in addition to all other rights and remedies which COUNTYCITY may have under applicable law and this Agreement, may at COUNTYCITY's option, and upon written notice to the CO-OP, request, and CO-OP hereby agrees, promptly upon request of the COUNTYCITY to assign to the COUNTYCITY all of the CO-OP's rights to collect charges and to enforce such collection for providing water or wastewater retail service to the CO-OP's customers. This assignment shall be a conditional assignment made solely as security for the payment by the CO-OP of its obligation for Wholesale Potable Water or Wastewater Service supplied by the COUNTYCITY pursuant to this Agreement, and CO-OP's resumption of full performance of its obligations under this Agreement shall thereafter render such assignment terminated and of no other force and effect, so long as the COUNTYCITY is fully paid for all past-due sums. COUNTYCITY

may exercise this power more than once, as necessary, to secure COUNTYCITY's entitlement to payment for services provided by CO-OP. In the event of an assignment to the COUNTYCITY pursuant to this paragraph, it is expressly understood and agreed by the parties hereto that before default occurs in the payment or performance by the CO-OP under this Agreement, and the required notice thereof from the COUNTYCITY, that the CO-OP shall have the right to collect such charges from its customers and retain use and enjoyment of same. In the event the COUNTYCITY exercises its rights under this Agreement, any sums charged (less a 25 percent service charge to cover COUNTYCITY's costs of assuming the customer service function) shall be credited to sums then due from the CO-OP to the COUNTYCITY, including sums that accrue during the term that the COUNTYCITY has undertaken assignment of the proceeds and collection of sums due from CO-OP to customers.

(2) In the event the COUNTYCITY is required to exercise its right to an assignment of the customer's rights under this section, the COUNTYCITY reserves the right to seek appointment of a receiver to undertake the obligations of collection of sums due to the COUNTYCITY pursuant to this Agreement.

(3) In addition to or as an alternative to the other means of collection specified herein, the COUNTYCITY reserves the right to establish a lien on assets of the CO-OP, pursuant to COUNTYCITY Code and State law, as the means to collect sums past due from the CO-OP to the COUNTYCITY pursuant to this Agreement in the event that sums remain unpaid for ninety (90) days or longer. The CO-OP is obligated to pay the COUNTYCITY's rates out of rates, fees, and assessments it collects from its members. If the CO-OP fails to satisfy the debt owed, hereunder, the CO-OP agrees it will establish an additional assessment payable directly to the COUNTYCITY against all effected property pursuant to Chapters 718, 719, and 723, Florida Statutes, to pay the debt hereunder, and this assessment shall be dedicated solely to payment of the debt hereunder.

(f) In the event of a continuing breach of the obligations of this Agreement by one party, the other party may terminate this Agreement on sixty (60) days prior written notice. Certain obligations as specified in this Agreement constitute continuing rights and obligations, and any and all sums due from one party to the other will still remain an obligation that is collectible by any means provided by this Agreement or available at law.

10. Assignability Of This Agreement.

(a) Upon written notice to CO-OP, COUNTYCITY may assign all or any part of COUNTYCITY's rights and obligations under this Agreement to another party, who shall be exclusively responsible for all applicable terms and conditions of this Agreement.

(b) Upon 90 days prior written notice to COUNTYCITY, CO-OP may assign all or any part of CO-OP's rights and obligations under this Agreement to another party, who shall be responsible for the terms and conditions of this Agreement as hereinafter provided. Following notice

from the CO-OP to the COUNTYCITY, the COUNTYCITY shall have the right to request from the CO-OP evidence of the financial ability of the proposed assignee to fulfill the requirements of this Agreement, specifically including payment and service delivery requirements set forth herein; and COUNTYCITY may require that the assignee hold the secondary Consumptive Use Permit as a water service provider and any other environmental permits required of a water or wastewater provider, and any PSC certificates. After the COUNTYCITY reviews the credentials of the assignee, the COUNTYCITY may require CO-OP to remain responsible, along with assignee, for certain obligations under this Agreement. For any assignment to be effective, the COUNTYCITY must give written approval pursuant to this Section.

11. Notices.

(a) All notices, consents, approvals, waivers and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given (1) when mailed by certified mail, postage prepaid, return receipt requested, (2) by hand delivery to the named individuals representing the party to be notified, or (3) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

CO-OP Zellwood Station
 2126 Spillman Drive
 Zellwood, Florida 32798-9799

COUNTYCITY: Director John Land, Mayor
 Orange County Utilities of Apopka
 Suite 400 P.O. Box 1229
 109 East Church Street
 Orlando Apopka, FL 32801-704-1229

WITH A

COPY TO: County Administrator
 Orange County Administration, 5th Floor
 201 South Rosalind Avenue
 Orlando, Florida 32801-3547 Jack Douglas, City Administrator
 City of Apopka
 P.O. Box 1229
 Apopka, FL 32704-1229

(b) Notices, consents, approvals, waivers and elections given or made as aforesaid

shall be deemed to have been given and received on the date of the mailing, delivery or transmission in accordance with this section.

(c) For emergency situations such as, but not limited to, situations where a boiled water notice is required, or when a violation of drinking water standards occurs or a pressure drop below 20 PSI occurs, both parties are under an affirmative duty to notify the other party of such an eventuality initially by telephone, and then immediately thereafter in writing by facsimile so that customers may be informed and protective actions may be taken by both parties. The CO-OP shall be responsible for all notifications to its customers. Emergency telephone notice to the COUNTYCITY shall be by notifying ~~Orange~~ COUNTYCITY Utilities Dispatch at 407-836-2777. Emergency telephone notice to the CO-OP shall be by calling 407-884-0150. Both parties shall notify the other as soon as they are aware that the above numbers will change or have changed.

12. Venue and Governing Law. This Agreement shall be governed by, construed under, interpreted and enforced in accordance with the law of the State of Florida. Any legal proceeding of any nature brought to enforce any right or obligation under this Agreement or arising out of any matter pertaining to this Agreement, shall be brought and tried in the Circuit Court of Orange COUNTYCITY, Florida. The parties consent and submit to the exclusive jurisdiction of any such court.

13. Agreement Binding Upon Successors. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the CO-OP and the COUNTYCITY to the same extent as if each successor and assign were named as a party hereto.

14. Severability. In the event any part of this Agreement shall be finally determined by a court of law to be illegal or unenforceable for any reason, then that illegal or unenforceable part shall be severed from the Agreement and the remaining terms shall continue in full force and effect.

15. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto, and no prior representation, inducement, promise or agreement, oral or written, between the parties not embodied herein shall be of any force and effect.

16. CO-OP Not an Agency of the COUNTYCITY. The CO-OP intends to exist as a separate independent utility, purchasing wholesale potable water and wastewater services from the COUNTYCITY. This Agreement does not intend to make the CO-OP an agency, employee or contractor of the COUNTYCITY, but rather an independent service provider, where the COUNTYCITY is the supplier of certain Wholesale Potable Water and Wastewater Services specified in this Agreement.

17. Insurance and Indemnification.

(a) During the duration of this Agreement, CO-OP and COUNTYCITY shall each provide and maintain insurance coverage of such types and in such amounts as may be deemed necessary by each party. Such insurance shall include at a minimum statutory workers' compensation and employers' liability, business automobile liability, and commercial general liability coverage. The parties acknowledge that the COUNTYCITY enjoys sovereign immunity and is self-insured in compliance with Florida Statutes Section 768.28. The CO-OP shall maintain general liability insurance with a minimum limit of \$2,000,000 per occurrence for services related to this Agreement and for the delivery of potable water to its customers and the collection and transport of wastewater from the CO-OP's customers to the Connection Point. The CO-OP shall maintain on file with the COUNTYCITY current certificates evidencing its minimum required insurance on forms acceptable to the COUNTYCITY, verifying that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTYCITY. Failure by CO-OP to maintain said insurance coverage shall be a basis for COUNTYCITY to immediately terminate the Agreement.

(b) Each party to this agreement shall be responsible for personal injury and property damage attributable to the negligent acts or omissions of that party and its officials and employees or arising out of or resulting from that party's negligent performance under this agreement, and agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses in connection therewith. However, nothing contained in this agreement shall constitute a waiver by COUNTYCITY of its sovereign immunity or the provisions of Florida Statutes Section 768.28.

18. Sewer Use Requirements.

(a) CO-OP agrees to comply in all regards with the pretreatment standards contained in the applicable City Ordinances, and Chapter 37 of the Orange COUNTY Code and to comply with state and federal law requirements with regard to pretreatment standards for wastewater flows to public wastewater treatment facilities. ~~The CO-OP agrees and understands that the COUNTY has adopted a pretreatment ordinance that will more readily comply with state and federal pretreatment requirements, and that the CO-OP has afforded itself an opportunity to review this ordinance, and agrees that it will and can comply with the requirements of this ordinance, which is a proposed amendment to Chapter 37 of the Orange COUNTY Code and creates a new Article XX. The provisions and covenants set forth in this paragraph shall survive the termination of this Agreement.~~

(b) The CO-OP specifically agrees that it will not accept or introduce hazardous materials into its wastewater and transport same to the COUNTYCITY. The CO-OP specifically

agrees to indemnify and hold the COUNTYCITY harmless in the event the CO-OP introduces any such hazardous materials into the wastewater treatment system or delivers it to the Connection Point(s) for treatment by the COUNTYCITY. The CO-OP shall be fully responsible for the removal, treatment or proper disposal of any hazardous material introduced into the CO-OP's collection or distribution system, or fully responsible for the costs incurred by the COUNTYCITY in the event such materials are inadvertently introduced into the COUNTYCITY's Water or Wastewater Facilities.

(c) ___ The COUNTYCITY is under an obligation imposed by the state and federal authorities to establish local limits for industrial discharges into COUNTYCITY's collection system. In recognition of this obligation upon the COUNTYCITY, CO-OP agrees:

- (1) That it is aware of these local limits, and CO-OP agrees that it will comply with said local limits and will not exceed same;
- (2) CO-OP agrees to issue control mechanisms to industrial users located within the CO-OP's service area. CO-OP shall be under a continuing obligation to notify COUNTYCITY of any such industrial users, and COUNTYCITY shall determine if additional joint control mechanisms are to be issued to CO-OP and any such users;
- (3) The CO-OP agrees to provide the COUNTYCITY access to all records compiled as part of the CO-OP's pretreatment program activities. The CO-OP shall provide COUNTYCITY with notice of key activities (e.g., enforcement actions and permit issuance) for industrial or other pretreatment users.
- (4) ___ The CO-OP agrees to enter and hereby grants CITY the power to enter into _____ to ensure compliance with applicable _____
- (5) The CO-OP may enforce pretreatment ordinance requirements on its customers in order to comply with the requirements of subsections (i) and (ii) of this section. However, the COUNTYCITY retains primary responsibility for enforcing pretreatment standards and requirements against industrial users located within the CO-OP service area. The COUNTYCITY may enforce COUNTYCITY's pretreatment ordinance standards whether CO-OP acts or not pursuant to this section.

19. **Force Majeure.** Neither the COUNTYCITY nor the CO-OP shall be liable to the other for any failure to perform under this Agreement, except for payments due hereunder, to the

extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (as) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

IN WITNESS WHEREOF, the parties hereto have set their hands and have executed this Agreement as of the date and year first written above.

ZELLWOOD STATION CO-OP, INC.

By: _____
Print Name: _____
Title: _____

Attest:

By: _____
Print Name: _____
Title: _____

ORANGE COUNTY CITY, OF APOPKA FLORIDA

~~By: Board of County Commissioners~~

By: _____
~~Richard T. Grotty~~ John Land
~~County Chairman~~ Mayor

ATTEST: ~~Martha O. Haynie, County Comptroller~~
~~As Clerk of the Board of County Commissioners~~

By: _____
Deputy City Clerk

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Exhibit A
CO-OP's Service Area

Legal Description. This exhibit should show all the existing and future retail areas of the CO-OP, including the inactive 190 mobile-home sites. It should exclude the undeveloped parcels within Zellwood Station, as this land will be retail customers of the COUNTY/CITY.

To be prepared by CO-OP.

Exhibit A

CO-OP's Service Area

Legal Description. This exhibit should show all the existing and future retail areas of the CO-OP, including the inactive 190 mobile-home sites. It should exclude the undeveloped parcels within Zellwood Station, as this land will be retail customers of the public utility service provider for the area.

To be prepared by OCU.

Exhibit-B

Initial Connection Points

This exhibit consists of two figures with the approximate locations of the water Connection Point and the wastewater Connection Point.

To be prepared by OCU.

AR Guthrie AGRCN Zellwood VS Wholesale - May 13, 2004 - clear copy.cov

Exhibit B

Initial Connection Points

This exhibit consists of detail with the proposed locations of the water Connection Point and the wastewater Connection Point.

To be prepared by OCU

S:\RGuthrie\AORC\NT\Apopka Zellwood Assignment\Wholesale Potable Water and Wastewater RDG & DAL changes 4 14 05.doc